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10/674,205	09/29/2003	Steffen Hansen	6415.200-US	2513

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PRINCETON, NJ 08540

EXAMINER
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RAJ, RAJIV J

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/674,205  
Filing Date: September 29, 2003  
Appellant(s): HANSEN et al.

Marc A. Began Reg. 48,829  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 19 May 2009 appealing from the Office  
action mailed 22 September 2008.

**(1) Real Party in Interest**

The real party of interest in this appeal is Novo Nordisk A/S, of Bagsvaerd, Denmark.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4146029	Ellinwood, Jr.	3-1979
5764159	Neftel	6-1998
6592519 B1	Martinez	7-2003

Applicant's Own Admission (AOA) "Background of the Invention"

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellinwood, Jr. (US 4146029) (hereinafter Ellinwood) in view of Neftel (US 5764159) (hereinafter Neftel), in view of Martinez (US 6592519 B1) (hereinafter Martinez) in further view of Applicant's Own Admission (hereinafter AOA).

## **Claim 1**

### **Ellinwood as shown, discloses the following limitations:**

- *a reservoir (111) containing an amount of a liquid drug, (see at least Ellinwood, Jr. Fig.12 Item 254)*
- *means (111, 121) for delivering the drug into a body of a user in accordance with a delivery rate value or profile, (see at least Ellinwood, Fig.21 Item 350-362)*

Ellinwood does not disclose the following limitations, however Neftel, as shown, does:

- *memory means (124) for storing data information, (see at least Neftel Column:8 Lines:5-13 “means for receiving said sequence of control information from said equipment and for storing at least a portion of said sequence of control information in said memorizing means, whereby at least a portion of the control information relating to each of said equipment in association with information identifying said equipment are memorized, said memorized information including at least the information representative of the operating duration of said equipment;”)*
- *timer means (123), (see at least Neftel Column:4 Lines:42-44 “The circuits of the control device 10 also include a clock signal or time base 54 which delivers time pulses on an output 54a that are applied to an input 40a”)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to add the features of Neftel into Ellinwood. One of ordinary skill in the art

would have added these features into Ellinwood, with the motivation of increasing the efficiency of monitoring and administering medication to patients (see at least Neftel Column:1 Lines:22-26).

Ellinwood/Neftel discloses the previous limitations as shown above.

Ellinwood/Neftel does not disclose the following limitation. However Martinez, as shown, discloses:

- *second processor means (122) adapted for calculating a time-dependent estimate for the amount of drug in the reservoir based upon received data information and time information from the timer means, and indication means (112) cooperating with the second processor means for indicating a calculated value* (see at least Martinez Column:7 Lines:50-67)

It would have been obvious to one of ordinary skill in the art at the time of the invention to add the feature of Martinez into Ellinwood/Neftel. One of ordinary skill in the art would have added this feature into Ellinwood/Neftel with the motivation to provide a more effective and accurate system for remotely monitoring and controlling the amount of medication administered to a patient from a particular medical instrument.

Ellinwood/Neftel/Martinez discloses the previous limitations as shown above.

Ellinwood/Neftel/Martinez does not disclose the following limitations. However AOA, as shown, discloses:

- *first processor means (121), and first transmission means (131) cooperating with the first processor means for transmitting data information to receiving means in the indicating device, the indicating device comprising: (AOA [0009] “the drug infusion device to transmit confirmation or these settings and commands back to the programmer. The return communication link also allows the drug infusion unit to transmit status information back to the programmer”)*
- *first receiving means (132) for receiving data information transmitted from the delivery device, (AOA [0008] “The monitor can be operated in response to information received and/or displayed from either the pump or the glucose sensor to thereby control pump operation through the use of radio telemetry signals.”)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to add the features taught by AOA into Ellinwood/Neftel/Martinez. One of ordinary skill in the art would have added these features into Ellinwood/Neftel/Martinez with the motivation to provide a more effective and efficient process for administering and monitoring a patient’s medication (see at least AOA [0002]).

**(10) Response to Argument**

In the appeal brief filed 19 May 2009, Appellant makes the following arguments:

Argument 1: Applicant asserts that the Examiner cites prior art that is not analogous to Applicant's invention.

Argument 2: Applicant asserts that the Examiner cites prior art that fails disclose a "*second processor means adapted for calculating a time—dependent estimate for the amount of drug in the reservoir based upon received data . . .*".

Argument 3: Applicant asserts that the Examiner's motivation to modify the prior art fails to address certain limitations in claim 1.

Examiner will address Appellant's arguments in the order listed.

**Response to Argument 1**: In response to applicant's argument that the cited prior art is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

**Response to Argument 2**: Applicant argues that the cited prior art fails to disclose a "*second processor means adapted for calculating a time—dependent*



*estimate for the amount of drug in the reservoir based upon received data . . .*”.

Examiner has fully considered applicant's arguments and respectfully disagrees.

Examiner asserts that “calculating estimate amount of drug” is disclosed by the cited prior art which discloses an invention that measures an amount of insulin, which correlates, to the users present correlating condition. (see at least Martinez Column:2 Lines:41-67 Column:3 Lines:1-67) Further, Examiner points out that the administration of insulin is a "*time dependent*" phenomena.

**Response to Argument 3:** Applicant argues that the Examiner's motivation to modify the prior art fails to address certain limitations in claim 1. Examiner has fully considered applicant's arguments and they are unpersuasive. Examiners reason to modify the prior art are appropriately addressed in the paragraphs addressing the motivation to combine. Further, these paragraphs, as written, do address all of the limitations.

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/R. J. R./

Examiner, Art Unit 3686

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